



Setti D. Warren
Mayor

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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Public Hearing Date:	May 18, 2010
Land Use Action Date:	June 22, 2010
Board of Aldermen Action Date:	July 12, 2010
90-Day Expiration Date:	August 16, 2010

DATE: May 14, 2010

TO: Board of Aldermen

FROM: Candace Havens, Interim Director of Planning and Development
Benjamin Solomon-Schwartz, Senior Planner

SUBJECT: #122-10 HOSSEIN VAHEDI TRUSTEE 33-35 HIGHLAND AVENUE REALTY TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION of NONCONFORMING STRUCTURE/USE to AMEND special permit/site plan #127-87(2) to relocate two parking spaces, to waive minimum parking stall dimensions, to allow parking in the setback, and to decrease the legally nonconforming minimum open space at 35 HIGHLAND AVENUE. Ward 2, NEWTONVILLE, on land known as Sec 24, Blk 9, Lot 28 containing approx 8,133 square feet of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-21(a)(2)(b), 30-21(b), 30-19(h)(1), 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

CC: Mayor Setti D. Warren

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



EXECUTIVE SUMMARY

The petitioners propose to add a driveway to the site of a four-family residence and to relocate two parking spaces from the rear of the site to the driveway. The proposal requires a special permit to increase the nonconformity with regard to open space (decreasing the open space from 47.5% to 38.5% where 50% is required), to locate one parking space within a side yard setback, and to amend the site plan previously approved by special permit. The Planning Department is concerned that the proposed site plan will inevitably lead to more parking stalls than allowed by a previous variance on the combination of this lot and the adjacent lot to the east. In addition, the Planning Department is concerned about the loss of open space on the site. The Planning Department recommends changes to the site plan, detailed below, that would allow the petitioner to accomplish his goals without decreasing the open space on-site or causing excessive parking on the lot.



*View of residence (left) and view of side yard proposed
for conversion to driveway (right)*

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When considering this request, the Board should consider the following criteria:

- Is the proposed site plan more detrimental than the existing site plan given the increase in nonconformity with regard to open space?
- Is the proposed waiver from parking requirements, allowing undersized stalls and allowing one stall in the side setback, in the public interest or the protection of environmental features?
- Is literal compliance with the provisions of the ordinance impractical due to the nature of the use or the conditions of the lot?

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The property is located in Newtonville, one block west of Walnut Street and the heart of the Newtonville village center. It is located within a Multi Residence 1 District (*SEE ATTACHMENTS "A" AND "B"*). The neighborhood has a mix of uses, including businesses along Walnut Street and residences on Highland Avenue, as well as a church on the street. Adjacent to the subject property is a multi-family building that was formerly in common ownership with the subject property. The rear of the site abuts the Austin Street municipal parking lot. The remainder of the street is characterized by a mix of one- and two-family residences. This neighborhood was originally subdivided for development in the mid- to late-nineteenth century.

B. Site

The 8,133 sq. ft. site currently contains one four-family home on a relatively flat site. The site was formerly in common ownership with the property to the east. A driveway adjacent to this lot provides access to four parking stalls on the site that are deeded to the adjacent condominium and to several parking spaces in the rear. The rear parking area includes a two-car garage and parking area in front of the garage. Although only two spaces are delineated on an existing conditions plan in front of the garage, the Planning Department has seen four cars parked in that area. The current site plan and number of dwelling units on the lot and the adjacent lot were allowed by a special permit through Board Order #127-87(2) and variance #8-88 (*SEE ATTACHMENTS "C" AND "D"*).

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

No change of use is proposed.

B. Building and Site Design

The petitioners do not propose any changes to the existing four-family wood-framed house. The petitioner propose to relocate two parking spaces from the rear of the site to the side of building, adding a curb cut along Highland Ave that would provide direct access to those two stalls. He proposes to remove the two stalls outside of the garage in the rear but does not propose any physical changes to the rear yard.

Although the proposed plan only shows four stalls on-site, the Planning Department is very concerned that the proposal will lead to an excess of four cars parked in these areas of the lot. In particular, this result would violate condition #1 of a previously variance for the site that limits the parking on the two sites to 20 or fewer stalls. If there are more than four de facto stalls on the site, this would violate the condition of the variance. In addition, by adding the additional driveway without altering the rear parking area, this proposal leads to an increase in the nonconformity with regard to open space. During previous conversations with the petitioner, the Planning Department discussed various alternate arrangements that would avoid these impacts. The petitioner chose not pursue other avenues. ***However, the Planning Department recommends that the petitioner make several changes to the rear parking facility to ensure that the number of parking stalls does not exceed the number allowed by variance and to prevent a reduction in open space on-site.*** The Planning Department recommends the demolition of the garage and the removal of excess pavement in the rear of the lot, allowing space for only two conforming stalls in that area. In addition, the Planning Department recommends fencing or landscape screening at the end of this parking area to prevent additional parking on the yard. If these changes were combined with a slightly narrower curb cut and driveway, Planning Department calculations indicate that the open space ratio could remain at 47.5%.

The petitioner has stated that the primary goal of the project is to ensure four independently accessible stalls for the four units in the building. These recommended changes would meet the petitioner's requirements while avoiding the negative consequences highlighted regarding open space and over-parking the lot. If the petitioner agrees to the recommended changes, the Planning Department would not be concerned with the location of a single parking stall in the side yard setback.

C. Landscape Screening and Lighting

There is existing landscaping along the lot line to the west. The petitioners have not proposed any additional landscape screening as part of the project. The Planning Department recommends that, if the landscaping is removed or dies in the future, the petitioner replace it with landscaping along the lot line.

IV. COMPREHENSIVE PLAN

The 2007 *Newton Comprehensive Plan* encourages preservation of existing neighborhoods. The Planning Department believes existing site plan would be detrimental to the character of the neighborhood by leading to an excess of parking stalls and reducing available open space. The site plan amendments recommended above could enable the petitioner to meet his goals while preserving the character of the neighborhood.

V. TECHNICAL REVIEW

A. Technical Considerations (Section 30-15 and 30-19). The Zoning Review Memorandum, dated March 25, 2010 (*SEE ATTACHMENT "E"*), provides an analysis of the proposal with regard to Section 30-15, Table 3, and Section 30-19. A special permit is required to increase the nonconformity of the lot with regard to open space. In addition, a special permit is required to locate one parking space within the side setback and to provide parking spaces with dimensions below those specified in 30-19. Finally, a special permit is required to amend the site plan previously approved through special permit 127-87(2).

B. Other Reviews

1. Engineering. As of the completion of this memo, the Engineering Department has not completed its review of the drainage and engineering information provided for this project. The completion of the Engineering Department review is expected prior to the Public Hearing.
2. Fire Department. The proposed parking changes will not alter fire access to the existing residence, and no fire accessibility review is necessary.

VI. ZONING RELIEFS SOUGHT

Based on the completed zoning review, dated March 25, 2010 (*SEE ATTACHMENT "E"*), the petitioner is seeking approval through or relief from:

- Section 30-19(h) and (m) to reduce dimensions of parking stalls and to allow parking in side setback
- Section 30-21(a)(2)(b) and (b), to increase nonconformity with respect to minimum

- open space
- Section 30-23, for site plan approval and to amend the site plan associated special permit #127-97(2)
- Section 30-24, for approval of special permit

VII. Summary of Petitioner's Responsibilities

At the Public Hearing, the petitioner should respond to the suggestions regarding the site plan, including the recommendation to remove the garage and excess pavement in the rear of the site.

ATTACHMENTS

ATTACHMENT A:	<i>Zoning Map</i>
ATTACHMENT B:	<i>Land Use Map</i>
ATTACHMENT C:	<i>Special Permit, Board Order #127-87(2)</i>
ATTACHMENT D:	<i>Variance #8-88</i>
ATTACHMENT E:	<i>Zoning Review Memorandum, dated March 25, 2010</i>

Attachment A Zoning Map

33-35 Highland Avenue and Vicinity

City of Newton,
Massachusetts

Legend

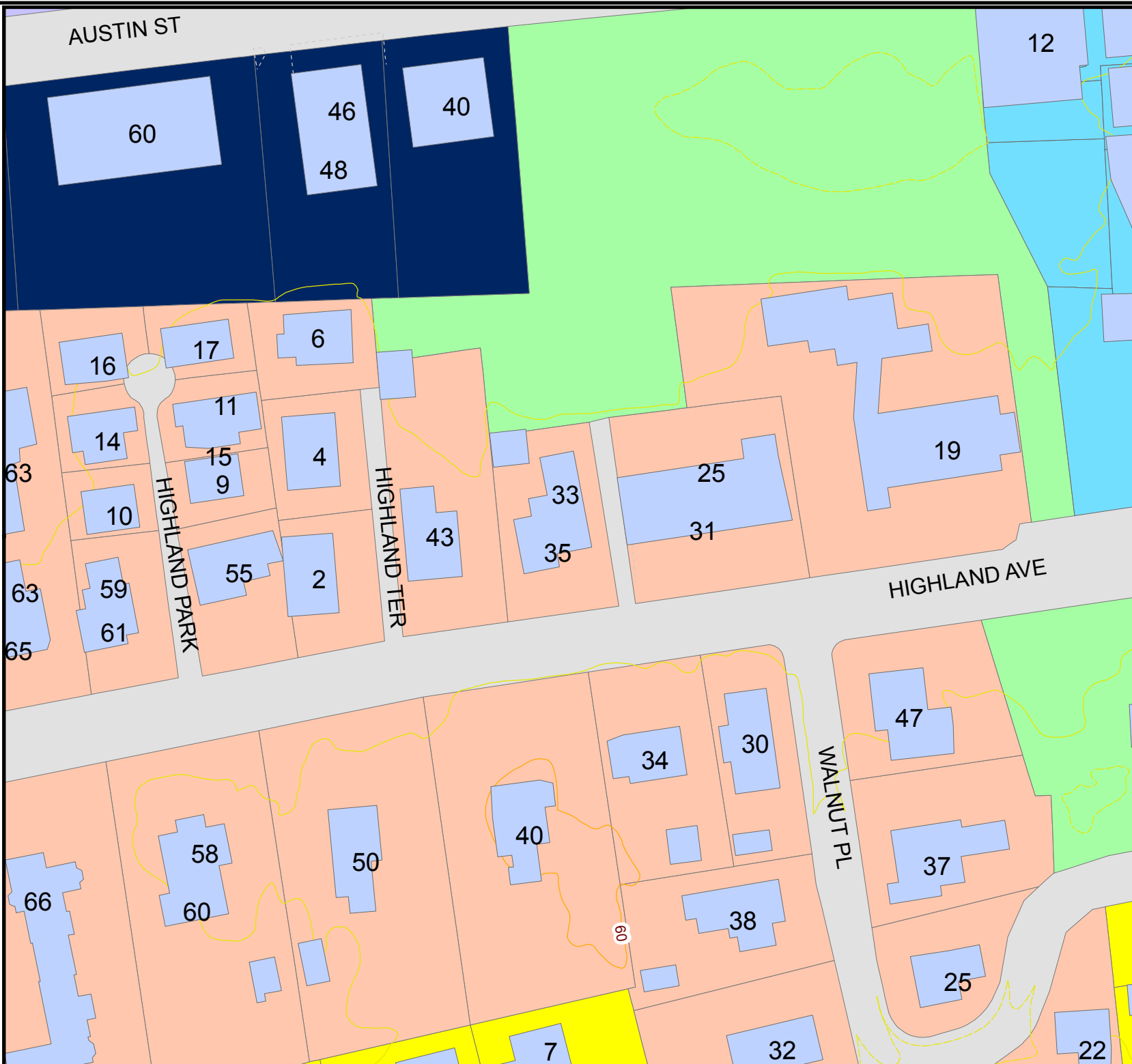
-  Building Outlines
-  Single Res. 1
-  Single Res. 2
-  Single Res. 3
-  Business 1
-  Business 2
-  Business 4
-  Business 5
-  Limited Manufacturing
-  Manufacturing
-  Multi-Res. 1
-  Multi-Res. 2
-  Multi-Res. 3
-  Multi-Res. 4
-  Mixed Use 1
-  Mixed Use 2
-  OS/Rec.
-  Public Use
-  Surface Water



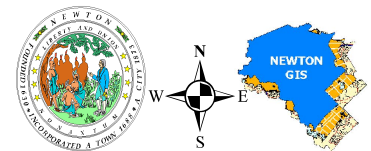
The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.



MAP DATE: May 10, 2010



*City of Newton,
Massachusetts*



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MAP DATE: May 10, 2010

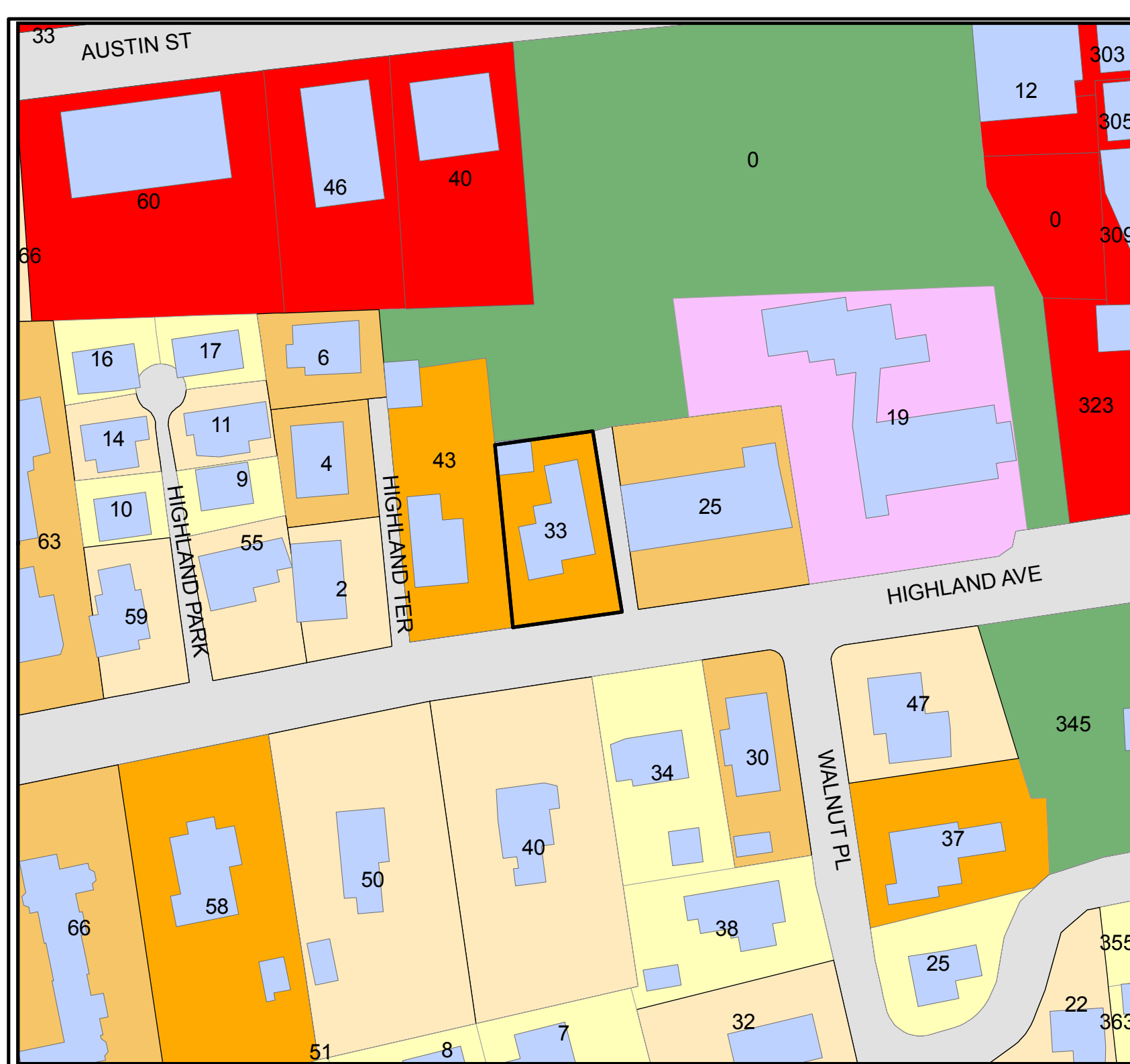


EXHIBIT "A"

#127-87(2)

CITY OF NEWTON

IN BOARD OF ALDERMEN

November 2, 1987

ORDERED:

That the Board finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent of the Zoning Ordinance, the following EXTENSION OF NON-CONFORMING USE is hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor through its Chairman, Alderman Cynthia Creem.

Petition number: 127-87(2)

Petitioner: Nicholas C. Porcaro

Location: 25-35 Highland Avenue, Ward 2, Section 24, Block 9, Lots 26 and 28 containing approximately 21,332 square feet.

Owner: Stephen M. Chapman and Nicholas C. Porcaro, Trustees Clipper Highland Trust

Address of owner: 230 Western Avenue, Boston, MA 02134

To be used for: Sixteen (16) unit apartment building on Lot 26 and a four (4) unit apartment building on Lot 28.

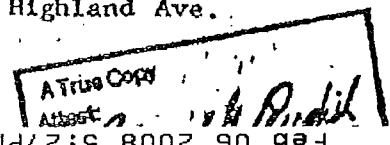
Construction: None

Explanatory note: Section 30-21(b) requires a Special Permit for extension of Non-conforming use.

Land referred to is in the Multi Residence 1 District.

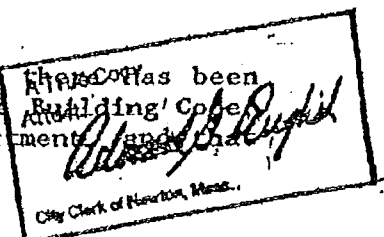
Approved, subject to the following conditions.

1. That, except as amended by Condition #4 below, the buildings, parking stalls, driveways, maneuvering aisles, walkways, landscape areas, and other site features shall be constructed and located consistent with plans entitled "Plan of Land In Newtonville Ma., Alterations to 25-31 and 33-35 Highland Ave."



Newton Mass" dated February 19, 1987 by Caspran Engineering Co. and revised through June 12, 1987 by Lou Robinson, Architectural Designer, submitted by the petitioner and filed herewith.

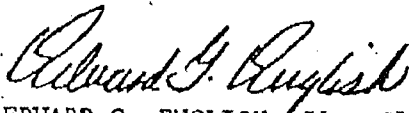
2. That the floor plans of the buildings shall be consistent with plans entitled "Existing First, Second, Third Floor Plans, 4-6; First, Second, Third Level Plan 31-35 Highland Ave 7-9;" dated February 19, 1987 by Lou Robinson, architectural designer, submitted by the petitioner and filed herewith.
3. That all solid waste shall be removed from the site at the owner's expense by a private rubbish collector.
4. That no building permit shall be issued in pursuance of the SPECIAL PERMIT until:
 - a. The Planning and Development Director shall have reviewed and approved of site plans stamped by a registered engineer showing existing and proposed parking and driveway areas and a statement certifying such approval shall have been filed with the Building Department and the City Engineer.
 1. That the new driveway and parking spaces shall meet dimensional requirements wherever possible.
 - b. A landscape plan including lighting, indicating the location, number, size and type of landscaping and landscape materials to be installed shall have been submitted to and approved by the Director of Planning and Development and a statement certifying such approval shall have been filed with the City Clerk and the Building Department.
 - c. The City Engineer shall have reviewed and approved the plans for site grading and storm drainage, and any necessity for sidewalk and curbing improvements along the street frontage, and a statement by the City Engineer certifying such approval shall have been filed with the City Clerk, the Building Department and the Department of Planning and Development.
 - d. The petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Board Order granting this SPECIAL PERMIT with appropriate reference to the book and page of the recording of the petitioner's title deed or notice of lease endorsed thereon.
 - e. A certified copy of such recorded notice shall have been filed with the City Clerk, the Building Department and the Department of Planning and Development.
 - f. A statement by the Building Department that there has been full compliance with the Massachusetts State Building Code, including any permits issued by said Department and that



the premises are suitable for occupancy shall have been filed with the City Clerk and the Department of Planning and Development.

- g. A statement shall be filed by the Chairman of the Newton Community Development Authority with the Building Department that the petitioner has conveyed a \$7,000 cash contribution to the Authority's subsidized housing fund (a.k.a. 10% Account).

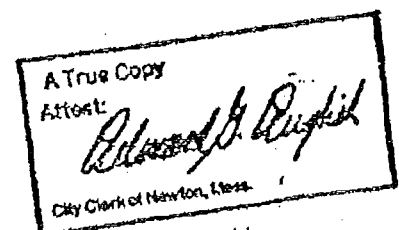
Under Suspension of Rules
Readings Waived and Approved
16 yeas 0 nays 7 absent
(Aldermen Barker, Davidson,
Gentile, Marini, Reilly,
Vance and Malec) 1 vacancy


(SGD) EDWARD G. ENGLISH, City Clerk

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting an EXTENSION OF NON-CONFORMING USE is a true accurate and copy of said decision; that all statutory requirements for the issuance of such EXTENSION OF NON-CONFORMING USE all plans referred to in the decision have been filed with the Planning and Development Board and the City Clerk, said decision having been filed in the office of the City Clerk on November 30, 1987.

Twenty days have elapsed since the date of filing of the Board Order with the City Clerk and no appeal thereto has been filed.

ATTEST
EDWARD G. ENGLISH, City Clerk



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CITY OF NEWTON, MASSACHUSETTS

CITY HALL
1000 COMMONWEALTH AVENUE
NEWTON CENTRE 02159

ZONING BOARD OF APPEALS

#8-88

Detailed Record of Proceeding and Decision

Petition of Nicholas C. Porcaro, Trustee of Clipper Highland Trust of
230 Western Avenue, Boston, MA.

For a use variance to legalize 2 dwelling units in a 4 unit dwelling
and density and dimensional controls located at 33-35 Highland Ave.,
Newtonville, MA.

The Zoning Board of Appeals for the City of Newton held a
public hearing on the above entitled proceeding on Tuesday, February
23, 1988 at 6:30 p.m. in the Aldermanic Chamber at City Hall, Newton,
Massachusetts.

The following members of the board were present:

Harold Meizler, Chairman
Casper Ferguson
Anthony Summers
Maurice A. Reidy

The petition was filed on January 12, 1988.

Due notice of the hearing was given by mail, postage prepaid, to
all persons deemed to be affected thereby as shown on the most recent
tax list and by publication in the News Tribune a newspaper of general
circulation in Newton, Massachusetts.

Accompanying the petition were plans entitled "Plan of Land In
Newtonville, MA", dated February 19, 1987 by Caspian Engineering Co.,
and floor plans entitled "Alterations to 33-35 Highland Ave., Newton,
MA", undated by Lou Robinson Arch. Designer.

MARGINAL REFERENCE REQUESTED

BOOK 17253 PAGE 56

FACTS:

The petitioner was represented by Attorney Dennis Ditelberg, 4 Longfellow Place, Boston, MA.

The subject site is located at 33-35 Highland Avenue, Newtonville, MA, Ward 2, Section 24, Block 9, Lot 28 containing 8,132 square feet in a Multi-Residence 1 District. The subject lot and the abutting Lot 26 were the subject of a Special Permit Approval granted by the Board of Aldermen in Board Order #127-87 in which the Board of Aldermen granted a 4-unit apartment on the subject lot and a 16-unit apartment on the abutting lot, all with conditions. After the Special Permit was granted it was discovered that 2 units at 33-35 Highland St. were not previously non-conforming and would need to obtain a use variance. In order to avoid the awkward situation of having the City sue itself, it was recommended that the petitioner apply for the use variance.

The petitioner stated that a hardship exists in that one unit had already been removed and that eliminating two more units would create an unreasonable hardship.

No one appeared in favor or in opposition.

FINDINGS AND DETERMINATION:

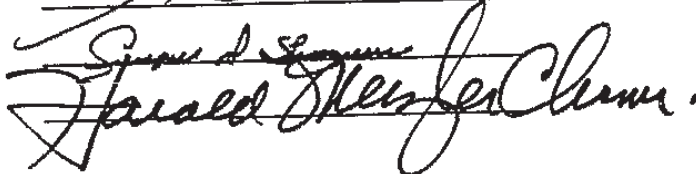
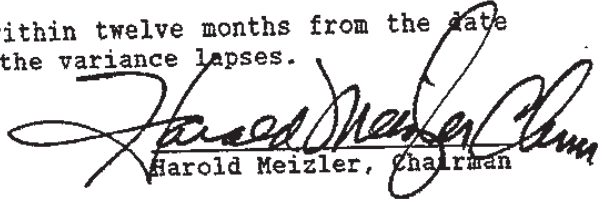
1. The site is unique as it provides parking for an abutting apartment house and shares the same passageway.
2. A hardship exists due to the size of the subject lot and the necessary association with the abutting lot.
3. No substantial detriment to the public would occur since the structures are already in existence.
4. Granting the variance would not derogate from the spirit and intent of the Zoning Ordinance in that the departure from the Zoning Ordinance requirements would not change.

Accordingly a motion was made by Mr. Reidy and duly seconded by Mr. Ferguson to grant the petition which motion passed four in favor and none opposed. Therefore, the variance is granted subject to the following conditions:

1. That the petitioner submit a revised parking plan for review and approval of the Director of Planning and Development not to exceed 20 parking stalls.

2. That except as amended above, all other conditions of Board Order #127-87(2) remain in effect.
3. That this variance must be recorded with the Middlesex Registry of Deeds within six months from the date of its filing with the City Clerk or the variance lapses.
4. That this variance be exercised within twelve months from the date of filing with the City Clerk or the variance lapses.

AYES:

Harold Meizler, Chairman

Copies of this decision and all plans referred to in this decision have been filed with the Planning and Development Board and the City Clerk.

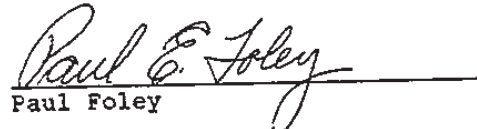
The decision was filed with the City Clerk on March 25, 1988

The City Clerk certified that all statutory requirements for the issuance of this VARIANCE have been complied with and that 20 days have lapsed since the date of filing of this decision and no appeal, pursuant to Section #17, Chapter 40A has been filed.



Edward English, City Clerk

I, Paul Foley, am the Clerk of the Zoning Board of Appeals and the Keeper of its records. This is a true copy of its decision.



Paul Foley

Zoning Review Memorandum

Dt: March 25, 2010

To: John Lojek, Commissioner of Inspectional Services

Fr: Eve Tapper, Chief Zoning Code Official
Candace Havens, Interim Director of Planning and Development

Cc: Hossein Vahedi, Trustee 33-35 Highland Avenue Realty Trust
Ouida Young, Associate City Solicitor

RE: Request to allow waiver of parking standards.

Applicant: 33-35 Highland Avenue Realty Trust

Site: 35 Highland Avenue Zoning: MR-1 Current use: Four-family residence	SBL: Section 24, Block 9, Lot 28 Lot Area: 8,133 square feet Proposed use: Four-family residence with additional parking
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Background:

The subject property consists of an 8,133 square foot lot currently improved with a four-family structure that was legalized through a use variance issued by the Board of Zoning Appeals on March 25, 1988 (Petition #8-88). The subject property and an abutting property (25-31 Highland Avenue) are also regulated by a special permit issued by the Board of Aldermen on November 2, 1987 (Board Order #127-87(2)). Both of these approvals were obtained when the properties were in common ownership.

The site plan approved with both the special permit and the variance shows a parking configuration whereby four parking spaces along the east side of the subject structure and located on the subject lot are for the exclusive and perpetual use of the adjacent property (25-31 Highland Avenue). This parking arrangement has been formalized with a "Declaration of Covenants, Restrictions and Easements" signed and dated August 15, 1988. The site plan also depicts four tandem parking spaces (two outdoor spaces behind the two spaces in a detached garage) in the rear of the property for use by the tenants of the subject property. The special permit, use variance and covenant all commit owners of both properties to providing parking in perpetuity.

The two properties are no longer in common ownership. The current owner of the subject property wants to relocate the two outdoor tandem parking spaces at the rear of the property to the west side of the existing structure outside of the front setback.

Administrative determinations:

1. Condition #1 of the approved use variance (Petition #8-88) limits the number of parking spaces on the joint sites to 20 or less. The parking layout approved by the Director of Planning and Development as required by the variance shows 19 parking spaces. The current application requests the relocation of two parking spaces but the total number of on-site spaces remains 19. This configuration does not require an amendment to the variance. However, while the submitted plans include a note that the tandem parking spaces are to be removed, there is no

indication that pavement will be removed from these spaces. In fact, the pavement cannot be removed because it provides access to the parking spaces in the garage. If the applicant is allowed to locate the parking as proposed on the submitted plans, there must be a condition that no parking will be allowed on the driveway outside the garage. This would likely be a problem to enforce, but if this area is ever used for parking the total number of spaces on the site would be 21, more than the 20 or less allowed by the variance.

2. The approved site plan showing 19 parking spaces is also referenced in the 1987 special permit for the properties (Board Order #127-87(2)). The applicant must receive approval from the Board of Aldermen for an amendment to the site plan for the old special permit. This amendment process can be completed in conjunction with the special permit process required for other aspects of the project (see below).
3. The property is in the MR-1 zone and must comply with the dimensional standards of Section 30-15, Table 1 for a pre-1953 lot (see chart below).

M R-1 Zone	Required/Allowed	Existing	Proposed
Lot size	7,000 sq. ft.	8,133 sq. ft.	No change
Frontage	70 feet	80.4 feet	No change
Setbacks			
• Front	25 feet	28.9 feet	No change
• Side	7.5 feet	10.9 feet	No change
• Rear	15 feet	21.6 feet	No change
Max. Lot Coverage	30%	29.5%	No change
Min. Open Space	50%	47.5%	38.5%

4. The subject property is legally nonconforming with respect to Minimum Open Space. The proposed addition will increase this nonconformity. The proponent needs a Special Permit from the Board of Aldermen under Sections 30-21(a)(2)(b) and 30-21(b).
5. In order to keep the proposed relocated parking spaces outside of the front setback, the owner has sited the spaces to the west of the building where there is a pinch point between the structure and the property line of 17 feet. It is impossible to locate two dimensionally compliant parking spaces in this area. Therefore, the applicant is requesting a waiver from the provisions of Sections 30-19(h)(2)(a) and (b), *Minimum Dimensions of Parking Stalls*. This is allowed with a special permit from the Board of Aldermen under Section 30-19(m).
6. Section 30-19(g)(1) prohibits parking in the front or side setbacks. The site plan submitted shows parking in the side setback. The petitioner must obtain a special permit from the Board of Aldermen per Section 30-19(m) to allow the proposed parking layout.

7. See “Zoning Relief Summary” below:

<i>Zoning Relief Summary</i>		
<i>Ordinance</i>		<i>Action Required</i>
	General	
	Amend site plan associated with 1987 special permit	Board of Aldermen
	Site	
§30-21(a)(2)(b), 30-21(b)	Increase nonconformity with respect to Minimum Open Space	SP per §30-24
	Parking	
§30-19(h)(2)(a) & (b), 30-19(m)	Reduce dimensions of parking stalls	SP per §30-24
§30-19(h)(1), §30-19(m)	Allow parking in side setback.	SP per §30-24

Plans and materials reviewed:

- “Topographic Plan of Land Newton, Massachusetts showing proposed conditions are #33-35 Highland Avenue” dated March 17, 2010, signed and stamped by Stephen E. Poole, Registered Professional Engineer and Joseph R. Porter, Professional Land Surveyor
- “Area Plan of Land, Newton, Massachusetts, at #33-35 Highland Avenue,” dated March 17, 2010, signed and stamped by Joseph R. Porter, Professional Land Surveyor
- Special Permit Board Order #127-87(2)
- Use Variance #8-88 from the Board of Zoning Appeals
- “Declaration of Covenants, Restrictions and Easements” dated August 15, 1988